

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer OR 27765.

Set aside and remanded.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Generally

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the case record provides no evidence of such a withdrawal, the decision to reject will be set aside and the case remanded for investigation into the nature of the creation of the refuge.

APPEARANCES: D. M. Yates, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

D. M. Yates has appealed from a decision by the Oregon State Office, Bureau of Land Management (BLM), dated October 29, 1982, rejecting her noncompetitive oil and gas lease offer, OR 27765, for 43.84 acres of land in Morrow County, Oregon. ^{1/} BLM rejected appellant's offer because the land sought lies within the boundaries of a national wildlife refuge. The U.S. Fish and Wildlife Service (FWS) takes the position that wildlife refuge lands are exempt from oil and gas leasing under 43 CFR 3101.3-3(a) except where these lands are subject to drainage. In such instances, leases are offered only under competitive bidding.

^{1/} The lands were described in the offer as follows: T. 5 N., R. 25 E., Willamette meridian, sec. 24: lot 1.

Appellant, in her statement of reasons for appeal, contends that the BLM decision not to lease is in error and is arbitrary and capricious because the subject land does not fall within the definition of 43 CFR 3101.3-3(a).

[1] The regulation cited by BLM, 43 CFR 3101.3-3(a)(1), provides, in relevant part, that "[n]o offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3-1 [lands subject to drainage]." "Wildlife refuge lands" are defined as follows:

Wildlife refuge lands. Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing. [Emphasis added.]

43 CFR 3101.3-3(a). This regulation has been interpreted to mean that oil and gas leasing is precluded only where lands are embraced in a withdrawal for the protection of all species of wildlife within a particular area. Nugget Oil Corp., 61 IBLA 43 (1981); Esdras K. Hartley, 57 IBLA 319 (1981).

The particular area embracing the subject lands appears to be the Umatilla National Wildlife Refuge. The record contains a letter dated April 26, 1982, written by FWS indicating that certain proposed leases for oil and gas exploration are in the Umatilla National Wildlife Refuge. The subject lease offer, OR 27765, is penciled in at the bottom of the letter to note, we presume, the letter's applicability to the subject lands. The township plat has a penciled notation referring to the FWS letter and noting that the subject land is "Within Refuge area."

Appellant contends, however, that the lands sought are not withdrawn as described in 43 CFR 3101.3-3(a)(1).

Although we have located a withdrawal that encompasses the subject land, Public Land Order (PLO) No. 3871, (30 FR 14731 (Nov. 22, 1965)), this withdrawal is for the John Day Lock and Dam Project and reserves the subject land under the jurisdiction of the Corps of Engineers, Department of the Army. PLO 3871 does not withdraw land as described in 43 CFR 3101.3-3(a)(1). In fact, we are unable to ascertain from the present record whether the lands in question are included in a withdrawal for the protection of all species of wildlife. For this reason, we must set aside the BLM decision and remand the case file. If the lands are not within such a withdrawal, then oil and gas leasing is not precluded by 43 CFR 3101.3-3. See D. M. Yates, 71 IBLA 126 (1983). If leasing is not precluded, BLM must consult with the surface management agency concerning its leasing recommendations. See Bernard A. Holman, 64 IBLA 13 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge